

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

DEBORAH PREITE

PLAINTIFF

VS.

CIVIL ACTION NO. 3:13CV00282-GHD-JMV

**BL DEVELOPMENT CORP.
d/b/a HARRAH'S TUNICA**

DEFENDANT

**ORDER GRANTING IN PART AND DENYING IN PART
MOTION FOR INDEPENDENT MEDICAL EXAMINATION**

Before the court is Defendant's motion for an independent medical examination of Plaintiff pursuant to FED.R.CIV.P. 35 [45]. The court has considered the submissions of the parties and the applicable law and is of the opinion that while defendant has shown good cause for an IME in as much as Plaintiff's physical condition is in controversy, the location selected for the exam is unreasonable despite defendant's willingness to pay for Plaintiff's travel expenses. The court has reached this conclusion particularly in view of the fact that Plaintiff resides in Pennsylvania, and the exam is slated to take place in Mississippi and will require Plaintiff to miss several days of work. Moreover, the court finds FED.R.CIV.P. 45(c), though applicable to subpoenas, to be instructive regarding what is considered a reasonable place for an IME. Pursuant to this rule a *party* may not be subpoenaed to attend a trial, hearing, or deposition outside "the state where [she] resides, is employed, or regularly transacts business in person" unless, of course, the place for the proceeding is within 100 miles of where she "resides, is employed, or regularly transacts business in person." Considering this authority, Plaintiff should not be required to travel to Mississippi.

THEREFORE, IT IS ORDERED:

1. Defendant's motion for a Rule 35 IME is granted to the extent that Plaintiff is hereby ordered to submit to a medical examination to be conducted either within the State of Pennsylvania or within 100 miles of where she "resides, is employed, or regularly transacts business in person."

2. The exam shall be conducted by an independent examiner, and no party or their counsel may have contact with said examiner except as necessary to arrange the exam or to provide necessary information requested by the examiner.

3. Within fourteen (14) days of this date, the parties shall submit to the undersigned a proposed, agreed order that complies with Rule 35.

This 6th day of November, 2014.

/s/Jane M. Virden
UNITED STATES MAGISTRATE JUDGE